

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter of Victor Sapara-Grant)	
Petitioner)	
)	
And)	CAUSE NO. 091218-68
)	
The Indiana High School Athletic Assoc. (IHSAA),)	
Respondent)	
)	
Review Conducted Pursuant to)	Open Hearing
I.C. 20-26-14 <i>et seq.</i>)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Procedural History

Petitioner is a nineteen-year-old senior (d/o/b February 1, 1991) currently attending Warsaw Community High School. He lives with mother and step-father in Warsaw, Indiana. His mother came to the United States from Mauritius¹ in 2004. Petitioner was not able to come to the United States until 2007. Petitioner started high school in Mauritius in January, 2005, and transferred to Warsaw in November, 2007. Petitioner participated in soccer and track at Warsaw.

In August, 2009, Petitioner requested a determination of his athletic eligibility status for the second semester of the 2009-2010 school year. On September 8, 2009, the Commissioner of the Indiana High School Athletic Association (IHSAA) found Petitioner to be athletically eligible to participate until the end of the first semester of the 2009-2010 school year but ineligible beginning with the second semester of the 2009-2010 school year.

On September 16, 2009, Petitioner sought review of the Commissioner's decision by Respondent's Review Committee. The Review Committee conducted its review on November 6, 2009, and issued its decision on November 18, 2009, upholding the Commissioner's decision declaring Petitioner ineligible to participate in interscholastic athletics for the second semester of the 2009-2010 school year.

¹ The Republic of Mauritius is an island nation off the coast of the African continent in the southwest Indian Ocean, about 560 miles east of Madagascar.

APPEAL TO THE CASE REVIEW PANEL

Petitioner, by his mother, appealed to the Indiana Case Review Panel² on December 18, 2009. Petitioner requested that the hearing be open to the public. On December 18, 2009, the parties were notified of their respective hearing rights. The record from the investigation and review by Respondent was requested and received. The record was copied and provided to each participating member of the CRP. Hearing was set for February 11, 2010, in the offices of the Indiana Department of Education, Indianapolis, Indiana. The parties received timely notice of the proceedings. A severe winter storm prevented travel on the date scheduled for the hearing. By agreement of the parties the hearing was rescheduled for March 12, 2010. The parties received timely notice of the hearing.

On March 12, 2009, the CRP convened.³ Petitioner and his mother appeared in person and by the Athletic Director of Warsaw Community High School. Respondent appeared by counsel. Prior to the hearing Respondent submitted two exhibits: R-1 IHSAA Boys State Meet Results, 6/5/2009 for Track & Field; and R-2 IHSAA Kokomo Boys Regional Results, 5/28/2009. Petitioner did not object to the admission of either exhibit. The CRP admitted the documents without objection.

Testimony was provided under oath or by affirmation. In consideration of the testimony and record, the following Findings of Fact and Conclusions of Law are determined.

FINDINGS OF FACT

1. Petitioner was raised by his mother in Mauritius for the first thirteen years of his life. His mother came to the United States on a tourist visa in November, 2004. She met the man who would become her husband. They were married in April, 2005. Petitioner remained in Mauritius, residing with his mother's brother.
2. After Petitioner's mother decided to remain in the United States she attempted to make arrangements for Petitioner to join her. Petitioner, as a teenager, attempted to make the arrangements as directed by his mother. Petitioner was required to find various records, obtain required immunizations, participate in interviews, and travel to various consulates, sometimes in other countries. He was unsuccessful in obtaining a tourist visa. Petitioner missed a lot of school during this time. However, he was still able to pass all of his classes except for algebra.

² The Case Review Panel (CRP) is a nine-member adjudicatory body appointed by the Indiana State Superintendent of Public Instruction. The State Superintendent or his designee serves as the chair. The CRP is a public entity and not a private one. Its function is to review final student-eligibility decisions of the IHSAA when a parent or guardian so requests. Its decision does not affect any By-Law of the IHSAA but is student-specific. In like manner, no by-law of the IHSAA is binding on the CRP. The CRP, by statute, is authorized to uphold, modify, or nullify any student eligibility decision by the Respondent. I.C. 20-26-14-6(c)(3).

³ Eight members were present: Mark Mason, Chair; Edwin Baker; Christi L. Bastnagel; Keith Pempek; James Perkins, Jr.; Matthew Rager; Earl H. Smith, Jr.; and Don Unruh.

3. After Petitioner's mother married a U.S. citizen, she was able to obtain permanent status in the United States. She received permanent status in 2007. This status eventually enabled Petitioner to obtain the authorization to travel to the United States to reunite with his mother.
4. While in Mauritius, Petitioner attended Saint Andrew's School.
5. After arriving in the United States in September, 2007, Petitioner resided with his mother and step-father in Warsaw, Indiana. Petitioner enrolled in Warsaw Community High School in November, 2007.
6. Petitioner's guidance counselor met with Petitioner to review his records from Saint Andrew's School. The guidance counselor spoke with a school official from Saint Andrew's School. Based upon these consultations, it was determined that Petitioner had enrolled in high school in January, 2006, and had earned 20 credits toward graduation from Warsaw Community High School.
7. Petitioner earned 15 credits during his sophomore year (2007-2008) and earned an additional 14 credit hours during his junior year (2008-2009). Petitioner is taking a variety of advanced placement courses during his senior year. He intends to go to engineering school after high school, either at Purdue University or Valparaiso University.
8. Petitioner participated in track during the spring of 2008, and soccer during the fall of 2008. It was later determined that Warsaw Community High School had not submitted the appropriate transfer application to the IHSAA. Petitioner was determined ineligible to participate in interscholastic sports for 365 days from his enrollment at Warsaw. Petitioner's times and points earned in track were vacated as he was disqualified from participation. Warsaw Community High School was also required to forfeit all soccer games in which Petitioner had participated, including the Sectional Title. Petitioner participated in track during the spring of 2009, and football during the fall of 2009.
9. By the end of his junior year Petitioner had been enrolled in high school for seven semesters. Questions arose concerning his eligibility to participate in interscholastic athletics during spring semester of his senior year.
10. After investigation, the Commissioner of the IHSAA determined Petitioner to be ineligible pursuant to **Rule 12-2** of the IHSAA General Eligibility Rules. This determination was upheld by the IHSAA Review Committee.

CONCLUSIONS OF LAW

1. Although the IHSAA, the Respondent herein, is a voluntary, not-for-profit corporation and is not a public entity, its decisions with respect to student eligibility to participate in interscholastic athletic competition are “state action” and for this purpose makes the IHSAA analogous to a quasi-governmental entity. IHSAA v. Carlberg, 694 N.E.2d 222 (Ind. 1997), *reh. den.* (Ind. 1998). The Case Review Panel has been created by the Indiana General Assembly to review final student eligibility decisions with respect to interscholastic athletic competition. I.C. 20-26-14 *et seq.* The Case Review Panel has jurisdiction when a parent, guardian, or eligible student invokes the review function of the Case Review Panel. In the instant matter, the IHSAA has rendered a final determination of student-eligibility adverse to the student. Petitioner has timely sought review. The Case Review Panel has jurisdiction to review and determine this matter. The Case Review Panel is not limited by any by-law of Respondent. The Case Review Panel is authorized by statute to either uphold, modify, or nullify the Respondent’s adverse eligibility determination.
2. Any Finding of Fact that may be considered a Conclusion of Law shall be so considered. Any Conclusion of Law that may be considered a Finding of Fact may be considered as such.
3. **Rule 12-2** provides that “[a]fter enrollment in the 9th grade for 15 or more school days, students shall be eligible for no more than four (4) consecutive years, or the equivalent. (e.g., 12 semesters in a trimester plan, etc.)”
4. Petitioner argues that to deny his request for eligibility would constitute a hardship. Respondent argues that the hardship rule does not apply to **Rule 12-2** (see **Rule 17-8.1**). The only exceptions to the application of the four year eligibility rule entail injury or illness which necessitate the student’s complete withdrawal from the school or prohibits attendance for that semester and the student does not receive any academic credit for that semester (**Rule 12-3**) or disability pursuant to **Rule 17-9**. None of these exceptions apply to Petitioner.
5. The CRP is not bound by either the By-Laws addressing the CRP nor by the language of the “Hardship Rule” that proscribes its application to the four year rule. However, because the CRP must conduct its proceedings pursuant to the Administrative Orders and Procedures Act (AOPA), I.C. 4-21.5-3, it is not free to ignore the By-Laws, especially ones that serve an obvious rational purpose such as the four year rule, and make student-specific decisions based upon whimsy. The burden remains with Petitioner to provide substantial evidence that would justify piercing the four year rule and permitting Petitioner to participate in the particular athletic event that is sanctioned by Respondent.
6. Petitioner has undergone a great deal of difficulty and hardship in attempting to reunite with his mother in the United States. Petitioner took on many responsibilities not generally undertaken by young teenagers. Throughout it all, he continued to go to school when he could, read, study, and take examinations. Petitioner is an excellent student taking rigorous courses. Although Petitioner’s journey has been difficult and it resulted

in Petitioner being enrolled in high school for nine semesters, such does not constitute a hardship under **Rule 17-8.4**,⁴ nor provide justification to pierce the four year rule.

ORDER

Respondent's determination that Petitioner has had four years of athletic eligibility available since his spring, 2006 enrollment in high school and has used all of his athletic eligibility as of the end of the fall 2009 semester is affirmed. This was determined by a vote of 5 - 3.

DATE: March 17, 2010

/s/ Mark Mason

Mark Mason, Chair
Case Review Panel

APPEAL RIGHT

Any party aggrieved by the decision of the Case Review Panel has thirty (30) calendar days from receipt of this written decision to seek judicial review in a civil court with jurisdiction, as provided by I.C. 4-21.5-5-5.

⁴ **Rule C-17-8.4: General Consideration**

a. Ordinary cases shall not be considered hardship; rather, the conditions which cause a violation of a Rule, a disregard of a decision or directive made under these Rules, or the failure to meet the eligibility requirements must be beyond the control of the school, the coach, the student, the parents and/or the affected party.